

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE SUBSTITUTE

FOR

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FOR

HOUSE BILLS NOS. 924, 714, 685, 756, 734 & 518

AN ACT

To repeal sections 21.795, 144.805, 226.030, 226.120, 226.200 and 227.100, RSMo 2000, relating to transportation, and to enact in lieu thereof twenty-four new sections relating to the same subject and an effective date for a certain section.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 21.795, 144.805, 226.030, 226.120, 226.200 and 227.100, RSMo 2000, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 8.1000, 8.1003, 8.1006, 8.1009, 8.1012, 8.1015, 8.1018, 8.1021, 8.1024, 8.1027, 21.795, 144.805, 226.030, 226.033, 226.120, 226.145, 226.147, 226.200, 226.227, 227.025, 227.100, 227.107, 644.038 and 1, to read as follows:

8.1000. As used in sections 8.1000 to 8.1027, the following terms shall mean:

(1) "Design-build", a project for which the design and construction services are furnished under one contract;

(2) "Design-build contract", a contract between the division and a design-builder, to furnish the architecture or

engineering and related design services required for a given public construction project and to furnish the labor, materials and other construction services for the same public project;

(3) "Design-builder", any individual, partnership, joint venture, corporation or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;

(4) "Design criteria consultant", a person, corporation, partnership or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(5) "Design criteria package", performance-oriented specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(6) "Director", the director of the division of design and construction;

(7) "Division", the state office of administration, division of design and construction;

(8) "Evaluation team", a group of people selected by the director to evaluate the proposals of the design-builders. The team shall consist of at least two representatives of the division of design and construction and two representatives of the using agency. A fifth member shall be selected by the director and shall serve as chairman to facilitate the evaluation

process and to vote only in case of a tie;

(9) "Proposal", an offer to enter into a design-build contract;

(10) "Request for proposals", the document by which the division solicits proposals for a design-build contract;

(11) "Stipend", an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design build proposal.

8.1003. 1. Notwithstanding any other provision of the law, the division of design and construction is hereby authorized to institute a pilot program whereby the design-build procurement process may be utilized on a limited number of public projects as set out below for the purpose of demonstrating the benefits of the design-build process in the public sector. This authorization for design-build procurement shall be for the sole and exclusive use of the division of design and construction.

2. The maximum number of projects to be procured on a design-build basis during the course of this pilot program shall be no more than four projects each with an estimated cost of five million dollars or less and no more than four projects each with an estimated cost of more than five million dollars.

3. The director of design and construction shall select those projects for which the use of the design-build procurement process is appropriate. In making that determination, the director shall consider:

(1) The likelihood that the design-build method of procurement will serve the public interest by providing substantial savings of time or money over the traditional

design-bid-build delivery process;

(2) The time available to complete the project and meet the needs of the end user and any need to expedite the delivery process;

(3) The type of project and its suitability to the design-build process;

(4) The size of the project;

(5) The level of agency knowledge and confidence about the project scope and definition;

(6) The availability of using agency staff to manage the project;

(7) The availability of the division of design and construction staff to manage the project.

4. The director of design and construction shall present progress reports on any ongoing design-build projects to the general assembly at each regular session during the course of the pilot program. In addition, the director shall present a final detailed report of all completed design-build projects to the general assembly completed each year during the pilot program. Such final reports shall contain an assessment of the advantages and disadvantages of the design-build process relative to the traditional design-bid-build procurement process on such completed projects.

8.1006. The division may adopt regulations pursuant to chapter 536, RSMo, for the conduct of the design-build process.

8.1009. 1. The director shall determine the scope and level of detail required to permit qualified persons to submit proposals in accordance with the request for proposals given the

nature of the project.

2. A design criteria consultant may be employed or retained by the division to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections and to provide any other professional service where the director deems it to be in the public interest to have an independent design professional assisting with the project administration. The consultant shall be selected and its contract negotiated in compliance with sections 8.285 to 8.291.

8.1012. 1. Notice of requests for proposals shall be advertised in accordance with section 8.250. The division shall publish a notice of a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal and the selection criteria to be used.

2. The director shall establish in the request for proposal a time, place and other specific instructions for the receipt of proposals. Proposals not submitted in strict accordance with those instructions shall be subject to rejection.

3. A request for proposals shall be prepared for each design-build contract containing at minimum the following elements:

(1) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative

weight and the procedures for making awards;

(2) The proposed terms and conditions for the design-build contract;

(3) The design criteria package;

(4) A description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or other information that will be acceptable;

(5) A schedule for planned commencement and completion of the design-build contract;

(6) Budget limits for the design-build contract, if any;

(7) Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;

(8) Requirements including any available ratings for performance bonds, payment bonds and insurance; and

(9) Any other information that the division in its discretion chooses to supply, including without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs or references to public records.

4. The director shall solicit proposals in a three-stage process. Phase I shall be the solicitation of qualifications of the design-build team. Phase II shall be the solicitation of a technical proposal including conceptual design for the project, and phase III shall be the proposal of the construction cost.

5. The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with sections 8.1000 to 8.1027 and section 327.395, RSMo, and as set

out in the instructions of the request for proposal.

8.1015. 1. Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to:

(1) Demonstrated ability to perform projects comparable in design, scope and complexity;

(2) References of owners for whom design-build projects have been performed;

(3) Qualifications of personnel who will manage the design and construction aspects of the project;

(4) The names and qualifications of the primary design consultants and contractors with whom the design-builder proposes to subcontract. The design-builder may not replace an identified subcontractor or subconsultant without the written approval of the director.

2. The evaluation team shall evaluate the qualifications of all proposers in accordance with the instructions of the request for proposal. Designers on the project shall be evaluated in accordance with the requirements of section 8.285 to 8.291. Qualified proposers selected by the evaluation team may proceed to phase II of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. Under no circumstances shall price or fee be a part of the prequalification criteria. Points assigned in the phase I evaluation process shall not carry forward to phase II of the process. All qualified proposers shall be ranked on points given in phases II and III only.

3. The director shall have discretion to disqualify any proposer, which in the director's opinion lacks the minimal qualifications required to perform the work.

4. Once a sufficient number of qualified proposers have been selected, the proposers shall have a specified amount of time with which to assemble phase II and phase III proposals.

8.1018. Phase II of the process shall be conducted as follows:

(1) The director shall invite the top five qualified proposers to participate in phase II of the process. If there are not five qualified proposers, then all qualified proposers will be invited to submit phase II. If three qualified proposers cannot be identified, the contracting process will cease;

(2) Proposers must submit their design for the project, to the level of detail required in the request for proposal. The design proposal should demonstrate compliance with the requirements set out in the request for proposal;

(3) The schedule for completing a project as designed by a proposer may be considered as an element of evaluation in phase II;

(4) Up to twenty percent of the points awarded to each proposer in phase II may be based on each proposers' qualifications and ability to design, construct and deliver the project on time and within budget;

(5) Under no circumstances should the design proposal contain any reference to the cost of the proposal;

(6) The design submittals will be evaluated and assigned points in accordance with the requirements of the request for



proposal. Phase II shall account for no more than fifty percent of the total point score as specified in the request for proposal.

8.1021. Phase III shall be conducted as follows:

(1) The phase III proposal must provide a firm, fixed cost of construction. The proposal must be accompanied by bid security and any other required submittals, such as statements of minority participation as required by the request for proposal;

(2) Cost proposals must be submitted in accordance with the instructions of the request for proposal. Failure to submit a cost proposal on time shall be cause to reject the proposal. Phase III shall account for not less than fifty percent of the total point score as specified in the request for proposal;

(3) Proposals for phase II and phase III shall be submitted concurrently at the time and place specified in the request for proposal. The phase III cost proposals shall be opened only after the phase II design proposals have been evaluated and assigned points;

(4) Cost proposals will be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team will make public its scoring of phase II. Cost proposals will be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the low bidder shall be awarded the total number of points assigned to be awarded in phase III. For all other bidders, cost points will be calculated by reducing the maximum points available in phase III by two percent or more

for each percentage point of the low bid by which the bidder exceeds the low bid and the points assigned will be added to the points assigned for phase II for each proposer;

(5) The responsive proposer with the highest total number of points will be awarded the contract. If the director determines, however, that it is not in the best interest of the state to proceed with the project pursuant to the proposal offered by the proposer with the highest total number of points, the director shall reject all proposals. In such event, all qualified proposers with lower point totals shall receive a stipend pursuant to section 8.1024 and the proposer with the highest total number of points shall receive an amount equal to two times such stipend;

(6) If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints or qualifications.

8.1024. As an inducement to qualified proposers, the division shall pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful design-build proposer, the state shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the state in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

8.1027. Any person or corporation that enters into a

design-build contract with the division of design and construction does not violate the requirements of chapter 327, RSMo, so long as the architectural, engineering or land surveying services to be performed under the contract are performed by:

(1) Persons who are duly licensed in this state and who are employees of the design-build contractor which holds a certificate of authority from the board of registration; or

(2) Persons who are duly licensed in this state and who are under contract to the design-build contractor; or

(3) Corporations that hold current certificates of authority from the board for the appropriate profession which are under contract to the design-build contractor.

21.795. 1. There is established a permanent joint committee of the general assembly to be known as the "Joint Committee on Transportation Oversight" to be composed of seven members of the standing transportation committees of both the senate and the house of representatives and three nonvoting ex officio members. The senate members of the joint committee shall be appointed by the president pro tem of the senate and the house members shall be appointed by the speaker of the house of representatives. No major party shall be represented by more than four members from the house of representatives nor more than four members from the senate. The ex officio members shall be the state auditor, the director of the oversight division of the committee on legislative research, and the commissioner of the office of administration or the designee of such auditor, director or commissioner. The joint committee shall be chaired jointly by both chairs of the senate and house transportation

committees. A majority of the committee shall constitute a quorum, but the concurrence of a majority of the members, other than the ex officio members, shall be required for the determination of any matter within the committee's duties.

2. The department of transportation shall submit a written report prior to November tenth of each year to the governor and every member of the senate and house of representatives which shall contain the following:

(1) A comprehensive financial report of all funds for the preceding state fiscal year which shall include a report by independent certified public accountants, selected by the commissioner of the office of administration, attesting that the financial statements present fairly the financial position of the department in conformity with generally accepted government accounting principles. This report shall include amounts of:

(a) State revenues by sources, amounts of federal revenues by source;

(b) Any other revenues available to the department by source;

(c) Funds appropriated, the amount the department has budgeted and expended for the following: contracts, right-of-way purchases, preliminary and construction engineering, maintenance operations and administration;

(d) Total state and federal revenue compared to the revenue estimate in the fifteen-year highway plan as adopted in 1992. All expenditures made by, or on behalf of, the department for personal services including fringe benefits, all categories of expense and equipment, real estate and capital improvements shall

be assigned to the categories listed in this subdivision in conformity with generally accepted government accounting principles;

(2) A detailed explanation of the methods or criteria employed to select construction projects, including a listing of any new or reprioritized projects not mentioned in a previous report, and an explanation as to how the new or reprioritized projects meet the selection methods or criteria;

(3) The proposed allocation and expenditure of moneys and the proposed work plan for the current fiscal year, at least the next four years, and for any period of time expressed in any public transportation plan approved by either the general assembly or by the voters of Missouri. This proposed allocation and expenditure of moneys shall include the amounts of proposed allocation and expenditure of moneys in each of the categories listed in subdivision (1) of this subsection;

(4) The amounts which were planned, estimated and expended for projects in the state highway and bridge construction program or any other projects relating to other modes of transportation in the preceding state fiscal year and amounts which have been planned, estimated or expended by project for construction work in progress;

(5) The current status as to completion, by project, of the fifteen-year road and bridge program adopted in 1992. The report shall also contain the current status as to completion of the fifteen-year program projects within the urban and rural areas of the state. The first written report submitted pursuant to this section shall include the original cost estimate, updated

estimate and final completed cost by project. Each written report submitted thereafter shall include the cost estimate at the time the project was placed on the most recent five-year highway and bridge construction plan and the final completed cost by project;

(6) The reasons for cost increases or decreases exceeding five million dollars or ten percent relative to cost estimates and final completed costs for projects in the state highway and bridge construction program or any other projects relating to other modes of transportation completed in the preceding state fiscal year. Cost increases or decreases shall be determined by comparing the cost estimate at the time the project was placed on the most recent five-year highway and bridge construction plan and the final completed cost by project. The reasons shall include the amounts resulting from inflation, department-wide design changes, changes in project scope, federal mandates, or other factors;

(7) Specific recommendations for any statutory or regulatory changes necessary for the efficient and effective operation of the department;

(8) An accounting of the total amount of state, federal and earmarked federal highway funds expended in each district of the department of transportation; and

(9) Any further information specifically requested by the joint committee on transportation oversight.

3. Prior to December first of each year, the committee shall meet and call before its members, officials or employees of the state highways and transportation commission or department of

transportation, as determined by the committee, for the sole purpose of receiving and examining the report required pursuant to subsection 2 of this section. The committee shall not have the power to modify projects or priorities of the state highways and transportation commission or department of transportation. The committee may make recommendations to the state highways and transportation commission or the department of transportation. Disposition of those recommendations shall be reported by the commission or the department to the joint committee on transportation oversight.

4. The committee shall submit records of its meetings to the secretary of the senate and the chief clerk of the house of representatives in accordance with sections 610.020 and 610.023, RSMo.

144.805. 1. In addition to the exemptions granted pursuant to the provisions of section 144.030, there shall also be specifically exempted from the provisions of sections 144.010 to 144.525, sections 144.600 to 144.748, and section 238.235, RSMo, and the provisions of any local sales tax law, as defined in section 32.085, RSMo, and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525, sections 144.600 to 144.748, and section 238.235, RSMo, and the provisions of any local sales tax law, as defined in section 32.085, RSMo, all sales of aviation jet fuel in a given calendar year to common carriers engaged in the interstate air transportation of passengers and cargo, and the storage, use and consumption of such aviation jet fuel by such common carriers, if such common carrier has first paid to the state of Missouri, in

accordance with the provisions of this chapter, state sales and use taxes pursuant to the foregoing provisions and applicable to the purchase, storage, use or consumption of such aviation jet fuel in a maximum and aggregate amount of one million five hundred thousand dollars of state sales and use taxes in such calendar year.

2. To qualify for the exemption prescribed in subsection 1 of this section, the common carrier shall furnish to the seller a certificate in writing to the effect that an exemption pursuant to this section is applicable to the aviation jet fuel so purchased, stored, used and consumed. The director of revenue shall permit any such common carrier to enter into a direct-pay agreement with the department of revenue, pursuant to which such common carrier may pay directly to the department of revenue any applicable sales and use taxes on such aviation jet fuel up to the maximum aggregate amount of one million five hundred thousand dollars in each calendar year. The director of revenue shall adopt appropriate rules and regulations to implement the provisions of this section, and to permit appropriate claims for refunds of any excess sales and use taxes collected in calendar year 1993 or any subsequent year with respect to any such common carrier and aviation jet fuel.

3. The provisions of this section shall apply to all purchases and deliveries of aviation jet fuel from and after May 10, 1993.

4. Effective September 1, 1998, all sales and use tax revenues upon aviation jet fuel received pursuant to this chapter, less the amounts specifically designated pursuant to the



constitution or pursuant to section 144.701, for other purposes, shall be deposited to the credit of the aviation trust fund established pursuant to section 305.230, RSMo[; provided however, the amount of such state sales and use tax revenues deposited to the credit of such aviation trust fund shall not exceed five million dollars in each calendar year.

5. The provisions of this section and section 144.807 shall expire on December 31, 2003].

226.030. 1. The state highways and transportation commission shall consist of six members, who shall be appointed by the governor, by and with the advice and consent of the senate, not more than three thereof to be members of the same political party.

2. Each commissioner shall be a taxpayer and resident of state for at least five years prior to [his] appointment. Any commissioner may be removed by the governor if fully satisfied of his inefficiency, neglect of duty, or misconduct in office. All commissioners appointed prior to October 13, 1965, shall serve the term for which they were appointed.

3. Commissioners appointed pursuant to this section shall be appointed for terms of six years. Upon the expiration of each of the foregoing terms of these commissioners a successor shall be appointed for a term of six years until [his] a successor is appointed and qualified which term of six years shall thereafter be the length of term of each member of the commission unless removed as above provided.

4. At the first regular meeting in January of each year following the adoption of this section, the members of the

commission shall elect by secret ballot a member as chairman and another member as vice chairman of the commission for a term of one year. The chairman and vice chairman shall not be members of the same political party. Neither the chairman nor the vice chairman shall serve more than two consecutive terms in such office.

5. The members of the commission shall receive as compensation for their services twenty-five dollars per day for the time spent in the performance of their official duties, and also their necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties.

226.033. 1. A commission member, during his or her tenure, shall not:

(1) Personally solicit political contributions in a speech given at a fundraiser;

(2) Allow his or her official title to be used in connection with fundraising activities;

(3) Solicit, accept or receive political contributions;

(4) Organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate for partisan political office or of a political party or partisan political group;

(5) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office; or

(6) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature or similar

material.

2. If a commission member engages in any of the activities set forth in subsection one of this section, such activity shall be considered misconduct pursuant to section 226.030. If the governor finds that the commissioner's involvement in such activities affects the commissioner's ability to carry out his or her official duties in a nonpartisan manner, the governor may remove the offending commissioner from the commission.

226.120. [The members of the commission shall elect a member as chairman and another vice chairman, each of whom shall hold such office for a term prescribed by the commission.] Four members of the commission shall constitute a quorum for the transaction of business and for the exercise of any of the powers or the discharge of any of the duties authorized or imposed by law. The commission shall meet at least once each month and at such other times, and at such places within the state, as the commission shall determine. The chairman or, in the event of [his] inability to act, the vice chairman may call special meetings of the commission upon notice to members.

226.145. 1. In addition to the audits authorized by section 29.210, RSMo, and section 226.140, the commission shall have a performance audit of the affairs of the department of transportation prepared by an independent certified public accountant or a firm of independent certified public accountants. The performance audit shall be open to public inspection. A copy of each audit prepared pursuant to this section shall be delivered to:

(1) The governor;

- (2) The lieutenant governor;
- (3) The president pro tem of the senate;
- (4) The speaker of the house of representatives; and
- (5) The state auditor.

2. The state auditor may, after receiving a copy of the performance audit:

- (1) Examine any work papers from the performance audit; or
- (2) Further audit the financial or other transactions of the department if the state auditor determines an additional audit is necessary.

3. As used in this section, "performance audit" means an examination of a program, activity, or function of the department of transportation, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. A performance audit shall also include an in-depth review of the fiscal management of the commission. The performance audit shall review the general financial operation and management of the department showing whether or not the operations are being handled in an efficient and economical manner and calling special attention to any excessive cost of operation or maintenance, any excessive expense and any excessive price paid for goods, supplies, services or labor by the department. The report shall call special attention to any illegal, improper or unnecessary expenditures and all inaccuracies, irregularities and shortages and shall make specific recommendations for the future avoidance of the same. Performance audits of the department shall determine and evaluate program performance according to program

objectives, responsibilities, and duties as set forth by statute or regulation. Performance audits, in accordance with generally accepted program evaluation standards, shall determine:

(1) Whether the program is being performed and administered as authorized or required by law, and whether this action conforms with statutory intent;

(2) Whether the objectives and intended benefits are being achieved, and whether efficiently and effectively;

(3) Benefits derived from any program in relation to the expenditures made therefor;

(4) Whether the program duplicates, overlaps, or conflicts with any other state program; and

(5) Whether the commission is fiscally responsible in managing the department's affairs and transactions.

4. The performance audit required by this section shall be completed by September 1, 2002, and every three years thereafter.

226.147. 1. Beginning November 10, 2002, and annually thereafter, the department of transportation shall submit a statewide transportation improvement plan, as part of its report required by section 21.795, to the governor and every member of the senate and house of representatives. The plan shall contain a list of highway construction projects contained in the fifteen-year highway plan adopted in 1992 in which the department of transportation will complete within the following five years. The plan shall detail what areas of the state, designated as either rural or urban, the department of transportation intends on completing within the five-year period. Following submission of the plan, the commission shall annually report to the governor

and the members of the general assembly the current status as to completion of the projects contained in the statewide transportation improvement plan. Five years following the submission of each plan, the commission shall report whether the construction projects listed in the plan have been completed or not. If the projects listed in the plan have not been completed, the commission shall state what percentage of the projects have been completed and the reasons why the projects were not completed within the five-year period.

2. The general assembly may use the information provided by the commission in subsection 1 of this section in determining whether the department of transportation's performance merits extension of the six-cent motor fuel tax imposed by section 142.803, RSMo, beyond April 1, 2008.

226.200. 1. There is hereby created a "State Highways and Transportation Department Fund" into which shall be paid or transferred all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes), and all other revenue received or held for expenditure by or under the department of transportation or the state highways and transportation commission, except:

- (1) Money arising from the sale of bonds;
- (2) Money received from the United States government; or

(3) Money received for some particular use or uses other than for the payment of principal and interest on outstanding state road bonds.

2. Subject to the limitations of subsection 3 of this section, from said fund shall be paid or credited the cost:

(1) [Of collection of all said state revenue derived from highway users as an incident to their use or right to use the highways of the state;

(2)] Of maintaining the state highways and transportation commission;

[(3)] (2) Of maintaining the state transportation department;

[(4)] (3) Of any workers' compensation for state transportation department employees; and

[(5)] (4) Of the share of the transportation department in any retirement program for state employees, only as may be provided by law[; and

(6) Of administering and enforcing any state motor vehicle laws or traffic regulations].

3. [For all future fiscal years,] The total amount of appropriations from the state highways and transportation department fund for all state offices and departments shall not exceed the total amount appropriated for such offices and departments from said fund for fiscal year 2001. Beginning in fiscal year 2003, the total amount of appropriations from the state highways and transportation department fund for all state offices and departments, except for the Missouri highway patrol, shall be reduced by one-third. For every subsequent fiscal year

thereafter, the total amount of appropriations from said fund for such offices and departments, other than the highway patrol, shall be reduced by the same dollar amount as the previous year until all state offices and departments do not receive any appropriations from the fund for fiscal year 2005 or any subsequent fiscal year. The amount of appropriations no longer transferred to other state agencies shall be used by the commission for the payment of principle and interest of any outstanding bonds issued pursuant to section 226.133.

4. The provisions of subsection 3 of this section shall not apply to appropriations from the state highways and transportation department fund to the highways and transportation commission and the state transportation department or to appropriations to the office of administration for department of transportation employee fringe benefits and OASDHI payments, or to appropriations to the department of revenue for motor vehicle fuel tax refunds [under] pursuant to chapter 142, RSMo, or to appropriations to the department of revenue for refunds or overpayments or erroneous payments from the state highways and transportation department fund.

5. All interest earned upon the state highways and transportation department fund shall be deposited in and to the credit of such fund.

6. Any balance remaining in said fund after payment of said costs shall be transferred to the state road fund.

7. Notwithstanding the provisions of subsection 2 of this section to the contrary, any funds raised as a result of increased taxation pursuant to sections 142.025 and 142.372,



RSMo, after April 1, 1992, shall not be used for administrative purposes or administrative expenses of the transportation department.

226.227. 1. Notwithstanding the provisions of sections 144.701 and 226.1010, RSMo, one-half of all of the revenue derived from the tax imposed by sections 144.010 to 144.430, RSMo, on all motor vehicles, trailers, motorcycles, mopeds and motortricycles shall be dedicated for highway and transportation use and distributed pursuant to subsection 2 of section 30(b) of article IV of the Missouri Constitution. One-half of the revenue derived from the rate of one cent on the dollar of the tax imposed by sections 144.010 to 144.430, RSMo, on all motor vehicles, trailers, motorcycles, mopeds and motortricycles shall be held and distributed in the manner provided in sections 144.701 and 163.031, RSMo. All of the remaining revenue derived from the tax imposed by sections 144.010 to 144.430, RSMo, on all motor vehicles, trailers, motorcycles, mopeds and motortricycles, shall be deposited by the state treasurer as follows:

(1) Up to seventy-five percent of the moneys to the "Public Transit/Multimodal Fund", which is hereby established in the state treasury. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the general revenue fund. All interest received on the fund shall be credited to the fund. Moneys in the fund are to be used for the purpose of planning, locating, relocating, establishing, acquiring, constructing, administering, developing, maintaining or operating public transit systems in the state. Moneys in the fund are to also be used for the purpose of paying

for transportation projects other than highway projects for aviation, railroads, ports, waterborne commerce, multimodal transportation centers, and bike and pedestrian trails and accommodations. Moneys in the fund are also to be used to pay for the maintenance of the thirty-six center-line miles described in section 227.025, RSMo. Expenditure of funds from the fund shall be subject to appropriation by the general assembly; and

(2) The remaining moneys shall be credited to the state road fund.

2. This section shall become effective July 1, 2003.

227.025. An additional thirty-six center-line miles of arterial roadways in any city not within a county which are functionally classified as of January 1, 2001, by the United States Department of Transportation as principal arterial highways shall have the traveled surface of the roadway maintained as public roads by the department of transportation. The department of transportation and such city shall mutually agree on those roadways to be maintained pursuant to this section. The cost of such maintenance shall be paid from the public transit/multimodal fund as established in section 226.227, RSMo.

227.100. 1. All contracts for the construction of said work shall be let to the lowest responsible bidder or bidders after notice and publication of an advertisement in a newspaper published in the county where the work is to be done, and in such other publications as the commission may determine[; provided, that in all cases where the project advertised shall be for the construction of more than ten miles of road, such advertisement

shall provide for bids on sections of said road not to exceed ten miles, as well as on the project as a whole, and such contract shall then be let so as to provide for the most economical construction of said project].

2. Each bid shall be accompanied by a certified check or a cashier's check or a bid bond, guaranteed by a surety company authorized by the director of the department of insurance to conduct surety business in the state of Missouri, equal to five percent of the bid, which certified check, cashier's check, or bid bond shall be deposited with the commissioner as a guaranty and forfeited to the state treasurer to the credit of the state road fund in the event the successful bidder fails to comply with the terms of the proposal, and return to the successful bidder on execution and delivery of the performance bond provided for in subsection 4. The checks of the unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

3. All notices of the letting of contracts under this section shall state the time and place when and where bids will be received and opened, and all bids shall be sealed and opened only at the time and place mentioned in such notice and in the presence of some member of the commission or some person named by the commission for such purpose.

4. The successful bidders for the construction of said work shall enter into contracts furnished and prescribed by the commission and shall give good and sufficient bond, in a sum equal to the contract price, to the state of Missouri, with sureties approved by the commission and to ensure the proper and prompt completion of said work in accordance with the provisions

of said contracts, and plans and specifications; provided, that if, in the opinion of the majority of the members of the commission, the lowest bid or bids for the construction of any of the roads, or parts of roads, herein authorized to be constructed, shall be excessive, then, and in that event, said commission shall have the right, and it is hereby empowered and authorized to reject any or all bids, and to construct, under its own direction and supervision, all of such roads and bridges, or any part thereof.

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state highways and transportation commission is authorized to enter into one interstate national highway design-build pilot project contract within ten years of the effective date of this section. Authority for design-build authorized by this section shall expire upon completion of the project selected, unless reauthorized by law.

2. For the purpose of this section a "design-builder" is defined as an individual, corporation, partnership, joint venture or other entity, including combinations of such entities making a proposal to perform or performing a design-build highway project contract.

3. For the purpose of this section, "design-build highway project contract" is defined as the procurement of all materials and services necessary for the design, construction, reconstruction or improvement of a state highway project in a single contract with a design-builder capable of providing the

necessary materials and services.

4. For the purpose of this section, "highway project" is defined as the design, construction, reconstruction or improvement of highways or bridges under contract with the state highways and transportation commission, which is funded by state, federal or local funds or any combination of such funds.

5. In using a design-build highway project contract, the commission shall establish a written procedure by rule for prequalifying design-builders before such design-builders will be allowed to make a proposal on the project.

6. In any design-build highway project contract, whether involving state or federal funds, the commission shall require that each person submitting a request for qualifications provide a detailed disadvantaged business enterprise participation plan. The plan shall provide information describing the experience of the person in meeting disadvantaged business enterprise participation goals, how the person will meet the department of transportation's disadvantaged business enterprise participation goal and such other qualifications that the commission considers to be in the best interest of the state.

7. The commission is authorized to issue a request for proposals to a maximum of five design-builders prequalified in accordance with subsection 5 of this section.

8. The commission may require approval of any person performing subcontract work on the design-build highway project.

9. The bid bond and performance bond requirements of section 227.100 and the payment bond requirements of section 107.170, RSMo, shall apply to the design-build highway project.

10. The commission is authorized to prescribe the form of the contracts for the work.

11. The commission is empowered to make all final decisions concerning the performance of the work under the design-build highway project contract, including claims for additional time and compensation.

12. The provisions of sections 8.285 to 8.291, RSMo, shall not apply to the procurement of architectural, engineering or land surveying services for the design-build highway project, except that any person providing architectural, engineering or land surveying services for the design-builder on the design-build highway project must be licensed in Missouri to provide such services.

13. The commission shall pay a reasonable stipend to prequalified responsive design-builders who submit a proposal, but are not awarded the design-build highway project. The design shall become the property of the department of transportation.

14. The commission shall comply with the provisions of any act of congress or any regulations of any federal administrative agency which provides and authorizes the use of federal funds for highway projects using the design-build process.

15. The commission shall promulgate administrative rules to implement this section or to secure federal funds. Such rules shall be published for comment in the Missouri Register and shall include prequalification criteria, the make-up of the prequalification review team, specifications for the design criteria package, the method of advertising, receiving and evaluating proposals from design-builders, the criteria for

awarding the design-build highway project based on the design criteria package and a separate proposal stating the cost of construction, and other methods, procedures and criteria necessary to administer this section.

16. The commission shall make a status report to the members of the general assembly and the governor following the award of the design-build project, as an individual component of the annual report submitted by the commission to the Joint Transportation Oversight Committee in accordance with the provisions of section 21.795, RSMo. The annual report prior to advertisement of the design-build highway project contract shall state the goals of the project in reducing costs and/or the time of completion for the project in comparison to the design-bid-build method of construction and objective measurements to be utilized in determining achievement of such goals. Subsequent annual reports shall include: the time estimated for design and construction of different phases or segments of the project and the actual time required to complete such work during the period; the amount of each progress payment to the design builder during the period and the percentage and a description of the portion of the project completed regarding such payment; the number and a description of design change orders issued during the period and the cost of each such change order; upon substantial and final completion, the total cost of the design-build highway project with a breakdown of costs for design and construction; and such other measurements as specified by rule. The annual report immediately after final completion of the project shall state an assessment of the advantages and disadvantages of the design-

build method of contracting for highway and bridge projects in comparison to the design-bid-build method of contracting and an assessment of whether the goals of the project in reducing costs and/or the time of completion of the project were met.

17. The commission shall give public notice of a request for qualifications in at least two public newspapers that are distributed wholly or in part in this state and at least one construction industry trade publication that is distributed nationally.

18. The commission shall publish its cost estimates of the design-build highway project award and the project completion date along with its public notice of a request for qualifications of the design-build project.

19. If the commission fails to receive at least two responsive submissions from design-builders considered qualified, submissions shall not be opened and it shall readvertise the project.

20. The provisions of this section shall be applicable to one interstate national pilot highway project which shall be selected by the commission and shall have a total maximum annual expenditure of one hundred twenty-five million dollars for the life of the design-build project.

644.038. Where applicable, pursuant to Section 404 of the Federal Clean Water Act, and where the United States Army Corps of Engineers has determined that a nationwide permit may be utilized for the construction of highways and bridges approved by the Missouri department of transportation, the department shall certify without conditions such nationwide permit as it applies



to impacts on all waters of this state.

Section 1. Moneys in excess of thirty million dollars, including any interest thereon, received by the state or any attorneys who have acted on behalf of the state relating to the case of State of Missouri ex rel. Nixon v. The American Tobacco Co., et al, shall be paid to the state road fund and, upon appropriation, be used for the construction and rehabilitation of state highways.